

AMENDED IN ASSEMBLY MAY 19, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 919

Introduced by Assembly Member Dutra

February 25, 1999

An act to amend Section 65589.5 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 919, as amended, Dutra. Land use: local agencies.

Under the Planning and Zoning Law, local agencies are required to make specified findings based upon substantial evidence before disapproving or conditionally approving a housing development project that renders it infeasible for the use of low- and moderate-income households. This law requires that when a proposed housing development project complies with the applicable general plan, zoning, and development policies in effect at the time that the project's application is determined to be complete, a local agency may not propose to disapprove the project or conditionally approve it at a lower density unless the agency bases its decision on written findings supported by substantial evidence on the record that certain conditions exist.

This bill would make changes in these conditions that a local agency is required to find and would revise the definition of "affordable to low- and moderate-income households."

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) The Legislature finds all of the following:

(1) The lack of affordable housing is a critical problem which threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments which limit the approval of affordable housing, increase the cost of land for affordable housing, and require that high fees and exactions be paid by producers of potentially affordable housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions which result in disapproval of affordable housing projects, reduction in density of affordable housing projects, and excessive standards for affordable housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible affordable housing developments which contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without meeting the provisions of subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands to urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided

1 away from prime agricultural lands; therefore, in
2 implementing this section, local jurisdictions should
3 encourage, to the maximum extent practicable, in filling
4 existing urban areas.

5 (d) A local agency shall not disapprove a housing
6 development project affordable to low- and
7 moderate-income households or condition approval in a
8 manner that renders the project infeasible for
9 development for the use of low- and moderate-income
10 households unless it finds, based upon substantial
11 evidence, ~~three~~ *one* of the following:

12 (1) The jurisdiction has adopted a housing element
13 pursuant to this article and the development project is
14 not needed for the jurisdiction to meet its share of the
15 regional housing need of low-, very low-, or
16 moderate-income housing.

17 (2) The development project as proposed would have
18 a specific, adverse impact upon the public health or
19 safety, and there is no feasible method to satisfactorily
20 mitigate or avoid the specific adverse impact without
21 rendering the development unaffordable to low- and
22 moderate-income households. As used in this paragraph,
23 a “specific, adverse impact” means a significant,
24 unavoidable, direct ~~and immediate~~ adverse impact, upon
25 the physical health and safety of the public as provided in
26 written standards, policies, or conditions as they existed
27 on the date the application was deemed complete.

28 (3) The denial of the project or imposition of
29 conditions is required in order to comply with specific
30 state or federal law, and there is no feasible method to
31 comply without rendering the development
32 unaffordable to low- and moderate-income households.

33 (4) Approval of the development project would
34 increase the concentration of lower income households in
35 a neighborhood that already has a disproportionately
36 high number of lower income households and there is no
37 feasible method of approving the development at a
38 different site, including those sites identified pursuant to
39 paragraph (1) of subdivision (c) of Section 65583, without



1 rendering the development unaffordable to low- and
2 moderate-income households.

3 (5) The development project is proposed on land
4 zoned for agriculture or resource preservation which is
5 surrounded on at least two sides by land being used for
6 agricultural or resource preservation purposes, or which
7 does not have adequate water or waste water facilities to
8 serve the project.

9 (6) The development project is inconsistent with the
10 jurisdiction's general plan land use designation as
11 specified in any element of the general plan as it existed
12 on the date the application was deemed complete, and
13 the jurisdiction has adopted a housing element pursuant
14 to this article.

15 (e) Nothing in this section shall be construed to relieve
16 the local agency from complying with the Congestion
17 Management Program required by Chapter 2.6
18 (commencing with Section 65088) of Division 1 of Title
19 7 or the California Coastal Act (Division 20 (commencing
20 with Section 30000) of the Public Resources Code).
21 Neither shall anything in this section be construed to
22 relieve the local agency from making one or more of the
23 findings required pursuant to Section 21081 of the Public
24 Resources Code or otherwise complying with the
25 California Environmental Quality Act (Division 13
26 (commencing with Section 21000) of the Public
27 Resources Code).

28 (f) Nothing in this section shall be construed to
29 prohibit a local agency from requiring the development
30 project to comply with written development standards,
31 conditions, and policies appropriate to, and consistent
32 with, meeting the quantified objectives relative to the
33 development of housing, as required in the housing
34 element pursuant to subdivision (b) of Section 65583. Nor
35 shall anything in this section be construed to prohibit a
36 local agency from imposing fees and other exactions
37 otherwise authorized by law which are essential to
38 provide necessary public services and facilities to the
39 development project.



(g) This section shall be applicable to charter cities, because the Legislature finds that the lack of affordable housing is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) “Affordable to low- and moderate-income households” means at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, and the remaining units shall be sold or rented to either lower income households or persons and families of moderate to middle income, as defined in Section 50093 of the Health and Safety Code or paragraph (2) of subdivision (c) of Section 65008. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

(3) “Area median income” shall mean area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for the lower income households in accordance with the provisions of this subdivision for 30 years.

(4) “Neighborhood” means a planning area commonly identified as such in a community’s planning

1 documents, and identified as a neighborhood by the
2 individuals residing and working within the
3 neighborhood. Documentation demonstrating that the
4 area meets the definition of neighborhood may include a
5 map prepared for planning purposes which lists the name
6 and boundaries of the neighborhood.

7 (i) If any city, county, or city and county denies
8 approval or imposes restrictions, including a reduction of
9 allowable densities or the percentage of a lot which may
10 be occupied by a building or structure under the
11 applicable planning and zoning in force at the time the
12 application is deemed complete pursuant to Section
13 65943, which have a substantial adverse effect on the
14 viability or affordability of a housing development
15 affordable to low- and moderate-income households, and
16 the denial of the development or the imposition of
17 restrictions on the development is the subject of a court
18 action which challenges the denial, then the burden of
19 proof shall be on the local legislative body to show that its
20 decision is consistent with the findings as described in
21 subdivision (d).

22 (j) When a proposed housing development project
23 complies with the applicable general plan, zoning, and
24 development policies in effect at the time that the
25 housing development project's application is determined
26 to be complete, but the local agency proposes to
27 disapprove the project or to approve it upon the
28 condition that the project be developed at a lower
29 density, the local agency shall base its decision regarding
30 the proposed housing development project upon written
31 findings supported by substantial evidence on the record
32 that both of the following conditions exist:

33 (1) The housing development project would have a
34 specific, adverse impact upon the public health or safety
35 unless the project is disapproved or approved upon the
36 condition that the project be developed at a lower
37 density. As used in this paragraph, a "specific, adverse
38 impact" means a significant, unavoidable, direct and
39 immediate adverse impact, upon the physical health and
40 safety of the public as provided in written standards,

1 policies, or conditions as they existed on the date the
2 application was deemed complete.

3 (2) There is no feasible method to satisfactorily
4 mitigate or avoid the adverse impact identified pursuant
5 to paragraph (1), other than the disapproval of the
6 housing development project or the approval of the
7 project upon the condition that it be developed at a lower
8 density.

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